

The Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in manufacturing or assembling tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

February 3, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated December 2, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Recently the accounting function for one of our locations in CITY, IL. was transferred to our CITY/STATE office. If you have pamphlets or bulletins available relating to sales taxes as it applies to a manufacturing facility, I would appreciate it if you could send them to me.

From information that I have, it appears that all manufacturing/production machinery and equipment is not taxed. Also all services and labor of any kind is not taxed. All inventory and purchased components along with packing and shipping supplies are not taxed. Please advise if these assumptions are not correct.

In reviewing some of the invoices that I have, I have found seven different tax rates applied. What determines the proper tax rate? Is it the originating shipping point or is it the destination, or receiving point for the goods shipped.

Thanks in advance for your response.

Enclosed is a copy of 86 Ill. Adm. Code 130.330 concerning the Manufacturing Machinery and Equipment Exemption. The Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. In order to document the exemption, the user of such machinery and equipment must supply an exemption certificate to the retailer as provided in 86 Ill. Adm. Code 130.330(g).

The manufacturing process is the production of articles of tangible personal property, whether such articles are finished products or articles for use in the

process of manufacturing or assembling different articles of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant, Section 130.330(b)(2).

The exemption does not apply to hand tools, coolants, lubricants, solvents, apparel, adhesives and similar supplies. Items used primarily in pre-production and post-production activities generally do not qualify. See Section 130.330(c)(3) and (4)(C)(D). The exemption is available for replacement parts purchased for exempt machinery or equipment, Section 130.330(b)(2).

Please see 86 Ill. Adm. Code 130.2070(a) where the term "containers" is defined to include packing and shipping materials. The sale of containers is not subject to Retailers' Occupation Tax when the purchasers of such containers transfer to customers the ownership of the containers together with what is contained in them. Purchasers buying containers for this type of use are making tax-free purchases for resale and should provide their suppliers with Certificates of Resale containing the items of information listed at 86 Ill. Adm. Code 130.1405(b), enclosed, to document the exempt status of such purchases. Please note that if containers merely provide a means of containing tangible personal property while in the process of being delivered to a customer and are retained, reused or discarded by the customer's supplier after such delivery is completed, they are taxable. See Section 130.2070(c)(1).

Labor or service expense is generally a cost of doing business and is not deductible when computing Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.410.

Regarding the existence of different tax rates in Illinois, please be informed that in addition to the State tax there are various local taxes in Illinois that may apply to sales of tangible personal property. See the enclosed copy of 86 Ill. Adm. Code 270.115 concerning jurisdictional questions of the Home Rule Municipal Retailers' Occupation Tax. Local taxes are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State is also immaterial for purposes of local taxes because if the sale occurs in an Illinois jurisdiction imposing a local tax, the local tax will be incurred. If a purchase order is accepted outside Illinois but the property being sold is in an inventory of a retailer located in a home rule municipality, or is subsequently produced in the home rule municipality, then the place where the property is located at the time of the sale will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such sale. See Section 270.115(b)(3).

Although the enclosed regulation (Section 270.115) concerns the Home Rule Municipal Retailers' Occupation Tax, the same principles outlined in this regulation apply to other local taxes administered by the Department (e.g., the Regional Transportation Authority Retailers' Occupation Tax or the DuPage County Water Commission Retailers' Occupation Tax).

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I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl Betz  
Associate Counsel

KB:msk  
Enc.